Supreme Court, U.S.
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No. 85-372

In The
Supreme Court of the United States
October Term, 1985

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ELAINE CHRISTENSEN, *et al.*,
Petitioners,

vs.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

———o———

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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PETITIONERS' REPLY TO MEMORANDUM FOR THE RESPONDENTS

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The Petitioners, holders of an interest in a land-locked Indian trust allotment, brought an action in the U.S. District Court for the District of Nevada pursuant to 25 U.S.C. § 345 to compel the United States to provide access

to the allotment. The District Court dismissed the action, on the basis that it was barred by the six-year statute of limitations for actions against the United States found in 28 U.S.C. § 2401(a). The Ninth Circuit Court of Appeals affirmed this determination, and the Petitioners filed this Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals, No. 85-372, to obtain review of this determination. The specific question presented in the Petition was:

> Did the codification in the 1948 Judicial Code of the six-year statute of limitations for certain actions against the United States formerly found in a subsection of the 1940 Judicial Code extend that statute of limitations to actions relating to Indian allotments, which were not subject to any statute of limitations prior to the adoption of the Judicial Code of 1948?

Pet. i.

Instead of opposing the Petition, the United States has "suggest[ed] that the petition in this case be held and disposed of in light of the Court's disposition in *Mottaz.*" Memorandum for the Respondents 3. The United States' reference was to *United States v. Mottaz, et al.*, No. 85-546, in which this Court granted the United States' Petition for Certiorari on November 18, 1985.

The Petitioners respectfully suggest that the question presented in this case is not, as the United States characterizes it, merely "somewhat related" to that presented in *United States v. Mottaz*, No. 85-546. Memorandum for the Respondents 3. Rather, it is virtually identical. Therefore, the Petition in this case should be granted, and this case and No. 85-546 should be briefed and argued together as one case, in accord with Rule 37.3.

In *United States v. Mottaz*, No. 85-546, the United States posed the question presented as

> Whether either the six-year statute of limitations in 28 U.S.C. 2401(a) or the twelve-year statute of limitations under the Quiet Title Act, 28 U.S.C. 2409a(f), bars a suit brought by the heir of an Indian allottee against the United States to recover land (or its value in money damages) to which the United States acquired title twenty-seven years earlier.

No. 85-546, Pet. (I).

The thrust of the questions presented in this case and in *Mottaz* thus are identical: Whether the six-year statute of limitations of 28 U.S.C. § 2401(a) applies to an action relating to an Indian allotment. The United States recognized this identity in its Petition for Writ of Certiorari in *United States v. Mottaz*, No. 85-546, where it was asserted that

> In contrast to the Eighth Circuit's decision in this case, the Ninth Circuit has held that a suit by an Indian under 28 U.S.C. 345 is subject to the generally applicable statute of limitations in 28 U.S.C. 2401(a). *Christensen v. United States*, 755 F.2d 705 (9th Cir. 1985). Accord, *Big Spring v. United States*, No. 84-4170 (9th Cir. July 31, 1985); *Loring v. United States*, 610 F.2d 649 (9th Cir. 1979). Indeed, the plaintiff in *Christensen* has filed a petition for a writ of certiorari asserting that the Eighth Circuit's decision in this case conflicts with the Ninth Circuit's holding in *Christensen*. See 85-372 Pet. 6.

No. 85-546 Pet. 23.

Thus, there exists here precisely the situation contemplated by Rule 37.3, which provides that "[o]n the Court's own motion, or on motion of one or more parties, the Court may order that two or more cases, involving what appear

to be the same or related questions, be argued together as one case, or on such terms as may be prescribed." Rule 37.3.

The Petitioners therefore respectfully request that this case, *Christensen v. United States*, No. 85-372, be briefed and argued together with *United States v. Mottaz*, No. 85-546. By so ordering, this Court will achieve the full and expeditious resolution of the important question of whether statutes of limitations for actions against the United States are applicable to cases involving Indian trust allotments brought pursuant to 25 U.S.C. § 345.

Respectfully submitted this 22nd day of November, 1985.

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